

EXHIBIT 9

Excerpts of Deposition of Alan Manning (“Manning Dep.”)
(February 8, 2018)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

- - -

IN RE:	:	Civil Action
	:	DOCKET NO.
CUNG LE, NATHAN QUARRY,	:	2:15-cv-01045-RFB-
JON FITCH, BRANDON VERA,	:	(PAL)
LUIS JAVIER VAZQUEZ and	:	
KYLE KINGSBURG, on behalf	:	CLASS ACTION
of themselves and all	:	
others similarly	:	
situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
ZUFFA, LLC, d/b/a	:	
ULTIMATE FIGHTING	:	
CHAMPIONSHIP and UFC,	:	
	:	
Defendants.	:	

- - -

Thursday, February 8, 2018

- - -

Videotaped deposition of
ALAN MANNING, taken pursuant to notice,
was held at the law offices of Berger &
Montague, P.C., 1622 Locust Street,
Philadelphia, Pennsylvania 19103,
beginning at 9:16 AM, on the above date,
before Constance S. Kent, a Certified
Court Reporter, Registered Professional
Reporter, Certified LiveNote Reporter,
and Notary Public in and for the
Commonwealth of Pennsylvania.

* * *

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1 particular worker or group of workers.

2 In your report, do you give
3 an opinion that, in this case, it is
4 possible to ascribe a measurable part of
5 a firm's revenue to the activities of a
6 particular worker or group of workers?

7 A. I expressed the view that
8 the fighters who were involved in a
9 particular revenue play a role in
10 generating the revenue for that event.

11 Q. Yes, but do you, in your
12 report, reach the conclusion that it's
13 actually possible to ascribe a measurable
14 part of a firm's revenue to the
15 activities of a particular worker or
16 group of workers?

17 MR. CRAMER: Asked and
18 answered.

19 You may answer.

20 THE WITNESS: I mean, I feel
21 that I -- you know, I answered
22 that in my previous --

23 BY MR. ISAACSON:

24 Q. Well, what you told me in

1 your previous answer was, I expressed the
2 view that fighters who are involved in a
3 particular revenue play a role in
4 generating revenue for that event, and
5 that doesn't tell me whether you are --
6 you state in your report that you can
7 ascribe a measurable part of a firm's
8 revenue to the activities of a particular
9 worker or group of workers.

10 What I want to know is, in
11 your report are you doing that, actually
12 reaching -- did you reach the opinion
13 that you can ascribe a measurable part of
14 a firm's revenue to the activities of a
15 particular worker or group of workers?

16 A. I'm not sure that I
17 understand quite the distinction from the
18 previous one. Do you mind expressing
19 that again -- asking that again?

20 Q. I'm focusing on, for
21 example, ascribing a measurable part of a
22 firm's revenue, and you told me that
23 fighters play a role in generating a
24 revenue for an event, and playing a role

1 doesn't tell me -- that may or may not be
2 ascribing a measurable part of a firm's
3 revenue to the event.

4 A. Well, it's not my -- in my
5 opinion, I don't attempt to measure part
6 of the revenue that will be due to the
7 workers.

8 Q. All right. And in reaching
9 the opinion that fighters who are
10 involved in a particular event play a
11 role in generating the revenue for that
12 event, I would like you to ask -- ask you
13 to look at paragraph 24, where you say:

14 "The fighters are people
15 with media articles written about them,
16 and often Wikipedia pages. It is
17 reasonable to conclude that the fighters
18 are the key workers in the event that the
19 customers are paying to watch and so play
20 an important role in generating revenue."

21 Is that the part of your
22 report -- well, that part of your report,
23 I think it's fair to say, says that the
24 fighters play a role in generating

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1 revenue for an event. Is there any other
2 part of your report that you would point
3 to me that would support that conclusion?

4 MR. CRAMER: Objection to
5 form. You're being unclear about
6 "that part of your report." You
7 read a part of a sentence.

8 MR. ISAACSON: The part I
9 read. The part I read.

10 MR. CRAMER: And not the
11 entire section that it's in?

12 MR. ISAACSON: Yes.

13 MR. CRAMER: Take your time
14 if you need to go through --

15 THE WITNESS: Okay. Do you
16 want me to go through every
17 paragraph and say --

18 BY MR. ISAACSON:

19 Q. Whatever you do.

20 A. Okay. And could you just
21 read back the question?

22 Q. Sure. I'm focusing on --
23 you said that fighters are people with
24 media articles written about them and

1 circumstances for when labor economists
2 use wage share in analyzing compensation.

10 THE WITNESS: I mean, I feel
11 I've answered that one.

12 BY MR. ISAACSON:

13 Q. Well, you told me about how
14 you've seen them individually, but have
15 you ever -- can you point to me to any
16 publication or other -- anything in
17 writing where someone has said that it's
18 appropriate -- labor economists use wage
19 share in analyzing compensation when
20 three appropriate circumstances are met,
21 and then list these three circumstances?

22 A. I -- in expressing my
23 opinion, I'm not simply copying out
24 conclusions that are -- it is not a

1 cut-and-paste job from someone else's
2 article. It is using well-attested
3 techniques and measures from the existing
4 literature, but combining them in a way
5 that I think is wholly appropriate to
6 this particular case. And that is what I
7 think of actually as trying to express an
8 expert opinion.

9 Q. All right. And I understand
10 you think that these are the appropriate
11 circumstances and you stated your reasons
12 for such, but I'd still like to know if
13 anybody -- of you've seen anybody write
14 out before that these are the three
15 appropriate circumstances for labor
16 economists to use wage share in analyzing
17 compensation?

18 MR. CRAMER: Asked and
19 answered.

20 THE WITNESS: I feel I've
21 answered it. These are my own
22 words. Did I cut and paste these
23 from someone else? No.

24 BY MR. ISAACSON:

1 Q. All right. And when you
2 say -- I know you didn't cut and paste
3 them, but have you seen any -- have you
4 seen anybody list these three criteria,
5 you know, in substance as the appropriate
6 circumstance for when you -- labor
7 economists would use wage share in
8 analyzing compensation?

9 A. I mean, I -- in my report
10 here I'm trying to express an opinion on,
11 you know, the particular questions I was
12 asked to address, and obviously that
13 is -- in some sense it is -- you know, it
14 is a particular case. So I am combining
15 well-attested, well-established ideas in
16 a way that is appropriate to that case,
17 and I think that is appropriate to
18 expressing an expert opinion.

19 Q. Right. And you've said to
20 me a couple times that you think these
21 three things are appropriate and I
22 understand that. And you said to me
23 they're not a cut and paste,
24 word-for-word.

1 My question is: Even if
2 they're not word-for-word, have you seen
3 any publication that lists these three
4 things, in sum and substance, as the
5 appropriate circumstance for a labor
6 economist to analyze wage -- to use wage
7 share in analyzing compensation?

8 A. I mean, wage share is very,
9 you know, commonly used in the sport
10 economics literature, so I'm drawing --
11 drawing from that.

12 I think the statement of the
13 question, which is the first criterion is
14 really just a statement of the question
15 in this case as I understand it. So I'm
16 not quite sure how I would take the
17 question in this case from some other
18 pre-existing -- pre-existing.

19 I mean, I think in cases
20 where one is trying to assess the impact
21 of anticompetitive practices, one is
22 trying to compare the actual compensation
23 in this case with compensation in the
24 but-for world.

1 So I think that's completely
2 standard.

3 Q. All right. I still don't
4 know whether you're telling me anybody
5 has listed these three things before.

6 A. I mean, I haven't seen -- I
7 mean, they're totally appropriate, and
8 you know, I'm combining well-attested
9 ideas, well-established ideas in a way
10 that's appropriate to that case, for that
11 combination -- because I'm not aware of
12 somebody who has written about this
13 particular case, that particular
14 combination which I chose to be
15 appropriate to this case and what I
16 think -- that is what I think I should be
17 doing when expressing an expert opinion,
18 I haven't got that.

19 Q. All right. So you've
20 reached the opinion that these three
21 factors are the appropriate circumstances
22 to consider in this particular case.

23 Can you point me to
24 anything -- any literature where these

1 three factors were considered appropriate
2 for some other -- for some other type of
3 facts or some other case?

4 A. Well, I think that -- I
5 mean, let me take them in order.

6 Q. I would like them in
7 combination. Not individually, in
8 combination, all three?

9 A. I think --

10 MR. CRAMER: Form.

11 You may answer.

12 THE WITNESS: I mean, what
13 I'm doing here is taking well-
14 established ideas individually and
15 drawing on ideas from established
16 work, well-established, and
17 combining them in a way that is
18 appropriate for this case. I
19 think that is appropriate to what
20 one is asked to do as an expert.

21 BY MR. ISAACSON:

22 Q. You've told me that several
23 times.

24 A. Yeah.

1 Q. You've got it on the
2 record --

3 A. Yes.

4 Q. -- that you feel it is
5 appropriate to combine these three
6 circumstances in this -- for the facts of
7 this case.

8 And what I'm asking you now,
9 have you run across, in any of your
10 research or writing or teaching, any
11 other specific facts or cases where
12 someone said the three circumstances that
13 you've identified are the appropriate way
14 to determine that wage share should be
15 used in analyzing compensation, all three
16 in combination?

17 A. But there is no equivalent
18 to this case in -- you know, it's about
19 the particular case.

20 Q. So looking at paragraph 10,
21 you discussed the question in this
22 litigation.

23 "In this litigation, the
24 question to be considered is different.

1 wage share is appropriate in analyzing
2 compensation? You make the proviso that
3 you might be able to go look, do an
4 analysis and find other factors, but as
5 of today, you would not have an opinion?

6 A. I would have to think about
7 how one might seek to, you know, analyze
8 what data was available. I have not, you
9 know, thought about that hypothetical
10 situation and so I don't have an opinion
11 on it.

12 Q. All right. And you
13 mentioned Dr. Zimbalist's comparison to
14 others -- between Zuffa and other sports.
15 Do you reach any opinions in your report
16 as to whether it was appropriate to
17 compare revenue -- labor share in one
18 sport to another sport?

19 A. No, I was not asked for --
20 to express an opinion on that. I have
21 not thought about that.

22 Q. All right. Now, in Item 3,
23 there's an or at the end. It is possible
24 to ascribe a measurable part of a firm's

1 revenue to the activities of a particular
2 worker or group of workers. Does that
3 mean it's sufficient to meet either one,
4 do you need both? I'm trying to
5 understand your -- because you mentioned
6 both, of a particular worker or group of
7 workers?

8 A. Well, I think of it as an
9 or, so it's one of the two.

10 Q. Right. And is it your
11 opinion that the record in this case
12 makes it possible to ascribe a measurable
13 part of a firm's revenue to the
14 activities of a particular worker?

15 A. I have -- I mean, I have not
16 been asked to express an opinion about
17 that. I have not given thought to that,
18 so I don't have an opinion on that.

19 Q. Okay. Is it your opinion in
20 this case that it's possible to ascribe a
21 measurable part of a firm's revenue to
22 the activities of a particular group of
23 workers?

24 A. I think that the event

1 revenue is -- you know, the fighters in
2 that event are -- the revenue from that
3 event is connected to the activities of
4 the workers in that fight, yes.

5 Q. And you reach that opinion
6 based on what you said in paragraph 24;
7 is that correct?

8 A. I mean, not only that.

9 That's what I expressed, that's how I
10 summarized that view, but I would go back
11 to just simply saying that I think the
12 fighters are the key people here, that
13 that is who all eyes are on when there is
14 a fight going on.

15 Q. But in terms of what you
16 have actually said in your report, your
17 reasons for concluding that it's possible
18 to ascribe a measurable part of a firm's
19 revenue to the activities of a particular
20 group of workers, what you've said in
21 your report about that can be found in
22 paragraph 24?

23 MR. CRAMER: Objection to
24 form.

1 THE WITNESS: I mean, I
2 think that that is -- no, I don't
3 really accept that. I think it is
4 more generally just saying that
5 the workers are the key people.

6 BY MR. ISAACSON:

7 Q. All right. Now, why does
8 what you say in paragraph 24 together
9 with workers being key people mean that a
10 measurable part of a firm's revenue is --
11 can be ascribed to a group -- to a group
12 of fighters in this case? Where do you
13 get the measurable part?

14 A. I mean, I think the -- I
15 mean, what I meant by measurable part
16 here is really that there are techniques
17 available in order to control for this.

18 So if one takes Dr. Singer's
19 approach, he's seeing how variation in
20 the foreclosure effect affects the worker
21 share. All things being equal.

22 Q. All right. So as part of
23 your report, you did not do any work as
24 to whether -- do any work that would

1 allow you to conclude that a measurable
2 part of a firm's revenue can be
3 attributed to any group of UFC fighters;
4 is that correct?

5 MR. CRAMER: Asked and
6 answered, form.

7 THE WITNESS: I mean, I
8 would simply, you know, repeat
9 what I said earlier that here is
10 some revenue coming from this
11 particular event, the fighters are
12 in that event, and so there is a
13 connection between the fighters in
14 that event and the revenue that
15 flows through that event.

16 BY MR. ISAACSON:

17 Q. But you did not try to
18 measure the amount of that connection; is
19 that correct?

20 A. I have not worked with the
21 data in this case.

22 Q. All right. And is all of
23 the event revenue for the Zuffa event
24 attributable to the fighters?

1 MR. CRAMER: Objection to
2 form.

3 THE WITNESS: No. I mean,
4 the claim is not the workers
5 should have 100 percent of the
6 event revenue, that they would
7 have that in the but-for world.

8 The claim is that they would have
9 a higher share than they actually
10 had.

11 BY MR. ISAACSON:

12 Q. All right. And based on
13 your -- the work you've done in this
14 case, what is your understanding of what
15 factors contribute to event revenues?

16 You've named the role of athletes. What
17 else would contribute?

18 A. I mean, I haven't studied
19 that so I don't have an opinion on that.

20 MR. CRAMER: We've been
21 going for almost an hour. If this
22 is a good time to break, we can
23 break.

24 MR. ISAACSON: Sure.

1 product.

2 A. Yeah.

3 Q. Why is that?

4 A. I mean, I think it's
5 important to see that one -- that
6 statement in the context of that
7 paragraph of what that is about, and I've
8 given the reason why I think that this
9 is, because event revenue is partly just
10 determined on the night by how many
11 people, for example, sign up for
12 pay-per-view, whereas things like
13 compensation would be set in large part
14 before that. That means that Dr. Topel's
15 regression is flawed.

16 Q. The -- all right. Now,
17 it -- when you say, "While event revenue
18 is plausibly proportional to marginal
19 revenue product for the reasons given
20 earlier," are the reasons given earlier
21 once more the statements in paragraph 24
22 about fighters are people with media
23 articles and often Wikipedia pages and --
24 as well as your statement that people

1 come to watch fighters?

2 A. No, not just that. I mean,

3 after paragraph 24, one goes to paragraph

4 25 that starts, "The reasoning that

5 supports this conclusion is the

6 following," and then I go through the

7 reasons for why that -- I mean, they're

8 also, you know, other pieces of evidence.

9 I mean, Dr. Topel's regression, flawed

10 though it is, does show that event

11 revenue -- that compensation is

12 significantly related to event revenue,

13 and I think that that is an indication of

14 really what I think is -- I think most

15 people would understand to be fairly

16 obvious, that the fighters are really

17 important people in these events.

18 Q. All right. So I want to

19 remove one word here just so I understand

20 it. Is there anything in your report

21 that shows that event revenue is

22 proportional to marginal revenue product?

23 A. I mean, I haven't worked

24 with the data so, I mean, that would

1 require working with the data.

2 Q. All right. And what is it
3 in paragraphs 25 and 26 that relates to
4 the issue of proportionality? I
5 understand how you're explaining why
6 marginal revenue product will change with
7 the number of people watching and the
8 amount that they pay, but why would that
9 be proportional?

10 A. Well, that I think is
11 explained in paragraph 27. So if the
12 revenue for the fight is twice as large,
13 then the marginal revenue product is
14 twice as high, and that is a definition
15 of proportionality.

16 Q. So what is it that allows
17 you to conclude that in paragraph 27,
18 that if a revenue for the fight is twice
19 as large then the marginal revenue
20 product -- actually, I have to breakdown
21 this sentence because I don't understand
22 this sentence.

23 So let's just break down
24 just the words and then we'll get into

1 the basis for the opinion.

2 A. Yup.

3 Q. If revenue for the fight is
4 twice as large, then the MR -- marginal
5 revenue product is twice as high.

6 A. Yup.

7 Q. I'm not getting the double
8 twice there.

9 A. Well, I'm imagining if we
10 can talk about a hypothetical --

11 Q. Right.

12 A. -- situation, that, you
13 know, there's a certain amount of people
14 watching money -- watching this and
15 paying money to watch, whether it's in
16 person or the event, and then we double
17 the amount of the people who are paying,
18 then that would imply that the marginal
19 revenue product of the labor of the
20 fighters has -- has doubled.

21 Q. All right. So I'm -- maybe
22 I'm understanding this now. So when you
23 say if revenue for the fight is twice as
24 large, then the marginal revenue product

1 THE WITNESS: I feel I've
2 answered that. I do feel I've
3 answered that.

4 BY MR. ISAACSON:

5 Q. Well, what -- I'm going to
6 go over it. I'm not even saying you
7 haven't answered it.

8 A. Okay. No, that's all right.

9 Q. I swear to you I haven't
10 understood your answer, so I'm going to
11 over it until I understand it.

12 The -- are you saying that
13 if event revenues double, it is
14 necessarily true that the marginal
15 revenue product of the athletes had to
16 have doubled?

17 A. Yes, I think that is what
18 it's saying. I mean, it's saying it is
19 plausibly proportional -- sorry,
20 proportional means that a doubling leads
21 to a doubling.

22 Q. Okay. So am I correct that
23 what you're saying is if the revenues are
24 proportional to the marginal revenue

1 product of labor, then you can conclude
2 that if event revenues double, then
3 marginal revenue product of labor has
4 doubled?

5 A. I'm sorry, could you just
6 read that back?

7 Q. Sure.

8 A. I'm a bit confused.

9 Q. So is what you're saying is
10 that if revenues are proportional to the
11 marginal revenue product of labor, then
12 you can conclude that if event revenues
13 double, then the marginal revenue product
14 of labor has doubled?

15 MR. CRAMER: Objection to
16 form.

17 You may answer if you
18 understand.

19 THE WITNESS: I think the if
20 at the start I didn't really
21 agree, and I think I prefer my
22 previous answers to --

23 BY MR. ISAACSON:

24 Q. Have you done any work in

- 1 this case -- have you done any work
- 2 reflected in your report that shows
- 3 that -- that in order for event revenue
- 4 to double, the marginal revenue product
- 5 of athletes at the event has to double?

6 MR. CRAMER: Objection to
7 form.

8 You may answer.

9 THE WITNESS: I mean, I

haven't studied, you know, the
data, the particular situations,
so I haven't got an opinion on
that.

14 BY MR. ISAACSON:

15 Q. All right. Is -- the first
16 sentence in paragraph 27 is followed by
17 the sentence, "So the marginal revenue
18 product will be proportional to the event
19 revenue," are you -- is the first
20 sentence in paragraph 27 an example of
21 what happens when event revenue and
22 marginal revenue product are proportional
23 to one another?

24 MR. CRAMER: Is that all it

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1 is or -- form.

2 You may answer if you
3 understand.

4 THE WITNESS: Yeah, I'm
5 sorry, I'm not quite sure I'm
6 understanding. Can you either
7 read it back or re-express it.

8 BY MR. ISAACSON:

9 Q. All right. So paragraph 27
10 concludes -- again this is my effort to
11 understand what you have written.

12 A. Okay.

13 Q. Paragraph 27 concludes:
14 "The marginal revenue" --
15 "So the marginal revenue product will be
16 proportional to the event revenue."

17 Is the first sentence in
18 that paragraph an example -- are you
19 presenting an example of what happens
20 when marginal revenue product is
21 proportional to event revenue?

22 MR. CRAMER: Form.

23 You may answer.

24 THE WITNESS: The first

1 sentence in paragraph 27 is, you
2 know, inviting them to think about
3 a hypothetical situation in which
4 event revenue doubles, and to say
5 that, yes, then the marginal
6 revenue product of labor will
7 double as well. So they're not --
8 they can vary independently in
9 that example. So it's simply a
10 way of expressing proportionality,
11 although perhaps it seems not a
12 very clear way.

13 BY MR. ISAACSON:

14 Q. And maybe it's helpful just
15 to state that the first sentence in
16 paragraph 27 is a hypothetical that
17 you're discussing; is that correct?

18 MR. CRAMER: Objection to
19 form.

20 You may answer.

21 THE WITNESS: I mean, I
22 haven't worked with the data in
23 this case. I mean, so it's
24 hypothetical, but I think it's --

1 you know, it's a very plausible,

2 reasonable hypothetical.

3 BY MR. ISAACSON:

4 Q. And do you have an opinion
5 as to whether the marginal revenue
6 product of inputs to events other than
7 the athlete is proportional to event
8 revenue?

9 A. I mean, I haven't worked
10 with the data in this case, so I haven't
11 got an opinion on that in this case.

12 Q. And for your opinion in this
13 case in paragraph 5, that wage share is
14 an appropriate way to analyze the
15 compensation of MMA fighters in this
16 case, is one premise for that conclusion
17 that event revenue is plausibly
18 proportional to marginal revenue product?

19 A. I mean, this is holding, you
20 know, other things equal, yes.

21 Q. And if marginal revenue
22 product is not shown to be proportional
23 to event revenue in this case, am I
24 correct you would not be able to reach an

1 opinion, without at least further
2 analysis, of whether wage share is an
3 appropriate way to analyze the
4 compensation of MMA fighters in this
5 case?

6 MR. CRAMER: Objection to
7 form.

8 You may answer.

16 BY MR. ISAACSON:

17 Q. All right. Would you agree
18 that if the marginal revenue product of
19 the inputs other than the athletes was
20 not proportional, then the -- to event
21 revenue, then the marginal revenue
22 product of the fighters would also not be
23 proportional?

24 MR. CRAMER: Objection to

1

2 CERTIFICATE

3

4

5 I HEREBY CERTIFY that the
6 witness was duly sworn by me and that the
deposition is a true record of the
testimony given by the witness.

7

8 It was requested before
completion of the deposition that the
9 witness, ALAN MANNING, have the
opportunity to read and sign the
deposition transcript.

10

11

12

Constance S. Kent



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Constance S. Kent, CCR, RPR, CLR
Certified Court Reporter
Registered Professional Reporter
Certified LiveNote Reporter
and Notary Public in and for the
Commonwealth of Pennsylvania
Dated: February 9, 2018

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